

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

**FILED**

UNITED STATES DISTRICT COURT  
SANTA FE, NEW MEXICO

**WILLIAM MCGHEE,**

MAR 31 2008

**Plaintiff,**

**v.**

CIV-04-0239 MV/LAM MATTHEW J. DYKMAN  
CLERK

**JOE WILLIAMS, et al.,**

**Defendants.**

**ORDER ADOPTING MAGISTRATE JUDGE'S  
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION (Doc. 246)**

**THIS MATTER** is before the Court on Magistrate Judge Lourdes A. Martínez' Proposed Findings and Recommended Disposition (*Doc. 246*) (hereinafter, "PF&RD"), filed on October 30, 2007. On November 23, 2007, Plaintiff filed his Objections to *Doc. 246* (*Doc. 248*) which are considered timely filed as a consequence of the Magistrate Judge having granted Plaintiff's Motion for Extension of Time to File Objections to *Doc. 246* (*Doc. 249*). Defendants did not file objections to the PF&RD and the time for filing objections has passed. The Court has conducted a *de novo* review of those portions of the PF&RD to which Plaintiff objects, relevant portions of the record of this case and relevant law. Having done so, the Court has determined that Plaintiff's objections are without merit. Accordingly, the Court will overrule Plaintiff's objections; adopt the PF&RD; grant Plaintiff's Third Motion for Reconsideration of Courts [sic] Order in *Doc. 210* (*Doc. 232*), to the extent that Plaintiff seeks to file an amended complaint as a matter of right pursuant to Fed. R. Civ. P. 15(a)(1)(A); permit Plaintiff to file an amended complaint within thirty (30) days after entry of this order, provided that his amended complaint does not reassert any claims

that have already been dismissed with prejudice from this case or assert any supplemental claims related to transactions, occurrences or events that have happened since March 1, 2004, the date that Plaintiff filed his Civil Complaint (*Doc. 1*);<sup>1</sup> and deny Plaintiff's Third Motion for Reconsideration of Courts [sic] Order in *Doc. 210* (*Doc. 232*) as to all other matters.

In Plaintiff's objections to the PF&RD, he objects to not being able to reassert, in an amended complaint, the following claims that have been dismissed with prejudice from this case: (1) his claims that Defendants Sedillo and LeMaster denied his prison grievances regarding the prison's rule against having lights on in his cell at night; and (2) his claim that Defendant LeMaster denied his prison grievances regarding restrictions on his out-going mail.<sup>2</sup> Citing *United States v. Sanchez*, 88 F.3d 1243 (D.C. Cir. 1996), Plaintiff contends that he should be allowed to reassert these claims in an amended complaint because "courts will go to particular pains to protect pro se litigants against technical errors if injustice would other-wise [sic] result."<sup>3</sup> He also contends that

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<sup>1</sup>Plaintiff's claims that have been dismissed with prejudice from this case are: (1) his claim under 42 U.S.C. § 1983 that Defendant Bustos unlawfully changed the prison's "Inmate Request to a Staff Member" form; (2) his claims under 42 U.S.C. § 1983 that Defendants Sedillo, LeMaster and Shanks unlawfully denied his prison grievances; (3) his claims under 42 U.S.C. § 1983 for monetary relief against Defendants Williams, Bustos and Prescott in their official capacities; (4) his claims under 42 U.S.C. § 1983 for declaratory and injunctive relief against Defendants Williams, Bustos and Prescott in their official capacities, except to the extent that his complaint seeks prospective injunctive relief and any declaratory relief that is ancillary to such prospective injunctive relief; and (5) his claims under 42 U.S.C. § 1983 against Defendants Williams, Bustos, Prescott and Perry for the violation of his right to equal protection of the law under the Fourteenth Amendment. See Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition, Granting Motion for Amended Judgement, Setting Aside Memorandum Opinion and Order, Vacating Judgment and Dismissing Claims With Prejudice (*Doc. 210*); Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition (*Doc. 242*) (*Doc. 244*); and Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition (*Doc. 243*) and Granting in Part and Denying in Part Defendants' Motion for Summary Judgment Contained in Their Martinez Report and Motion for Summary Judgment (*Doc. 221*) (*Doc. 245*).

<sup>2</sup>These claims were dismissed with prejudice in the Court's *Order Adopting Magistrate Judge's Proposed Findings and Recommended Disposition, Granting Motion for Amended Judgement, Setting Aside Memorandum Opinion and Order, Vacating Judgment and Dismissing Claims With Prejudice* (*Doc. 210*), filed on November 14, 2006.

<sup>3</sup>*Objections to Doc. 246* (*Doc. 248*) at 2.

he should be allowed to reassert these claims in an amended complaint because he is “mentally degenerated.”<sup>4</sup>

Plaintiff’s contention that he should be protected against “technical errors” has no merit. His claims against Defendants Sedillo and LeMaster for denying his prison grievances were dismissed with prejudice, *sua sponte*, pursuant to 28 U.S.C. § 1915(e)(2) and Fed. R. Civ. P. 12(b)(6), for failure to state a claim on which relief may be granted under 42 U.S.C. § 1983.<sup>5</sup> Plaintiff’s contention that he is “mentally degenerated” is not supported by the record and Plaintiff has made no showing, in his objections or elsewhere in the record, that he is mentally incapable of litigating this case on his own behalf.

**IT IS THEREFORE ORDERED** that Plaintiff’s objections to the Magistrate Judge’s Proposed Findings and Recommended Disposition (*Doc. 246*) are **OVERRULED** and the Proposed Findings and Recommended Disposition (*Doc. 246*) are **ADOPTED** by the Court.

**IT IS FURTHER ORDERED**, for the reasons set forth in the Proposed Findings and Recommended Disposition (*Doc. 246*), that Plaintiff’s Third Motion for Reconsideration of Courts [sic] Order in Doc. 210 (*Doc. 232*) is **GRANTED**, to the extent that Plaintiff seeks to file an amended complaint as a matter of right pursuant to Fed. R. Civ. P. 15(a)(1)(A), and Plaintiff may file an amended complaint within thirty (30) days after entry of this order, provided that his amended complaint does not reassert any claims that have already been dismissed with prejudice from this case or assert any supplemental claims related to transactions, occurrences or events that have

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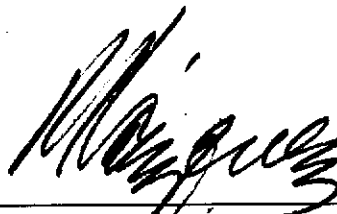
<sup>4</sup>*Id.*

<sup>5</sup>See *Order Adopting Magistrate Judge’s Proposed Findings and Recommended Disposition, Granting Motion for Amended Judgement, Setting Aside Memorandum Opinion and Order, Vacating Judgment and Dismissing Claims With Prejudice* (*Doc. 210*) at 3.

happened since March 1, 2004, the date that Plaintiff filed his Civil Complaint (*Doc. 1*).<sup>6</sup> The ten (10) day time limitation in Fed. R. Civ. P. 15(a)(3) shall govern the deadline for filing Defendants' response, and assertion of any affirmative defenses, to the amended complaint.

**IT IS FURTHER ORDERED** that as to all other matters, Plaintiff's Third Motion for Reconsideration of Courts [sic] Order in Doc. 210 (*Doc. 232*) is **DENIED**.

**IT IS SO ORDERED.**



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HON. MARTHA VÁZQUEZ  
UNITED STATES DISTRICT JUDGE

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<sup>6</sup>Plaintiff's claims that have been dismissed with prejudice from this case are listed in footnote 1, above.